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OFFICE OF PETITIONS

In re Application of
Sobek et al.
Application No. 09/646,101
International
Filing Date: March 13, 1999
For: UMBRELLA DEVICE

: Corrected
: Letter Regarding
: Extension of Patent Term

The above-identified application has been forwarded to the undersigned for correction of the patent term extension information printed on the Notice of Allowance and Issue Fee due that was mailed on March 4, 2005, which incorrectly states the patent term is extended by 346 days. See 35 U.S.C. §§ 154(a)(2) and (b)(1)¹ and 37 C.F.R. § 1.701(a).

Issue of the above-identified application was delayed due to appellate proceedings before the Board of Appeals and Interferences, and the above-identified application has been allowed pursuant to a favorable decision by the Board.

A Notice of Appeal was filed in the above-identified application on November 5, 2003. On November 16, 2004, the Board of Appeals and Interferences reversed the decision of the examiner in the above-identified application. Since the above-identified application was filed after June 7, 1995, there is no terminal disclaimer due to the issue of another patent claiming subject matter that is not patentably distinct from that under appellate review, and issuance of the application as a patent was delayed due to appellate review resulting in a reversal of an adverse decision of patentability, the patent to issue from the application is entitled to an extension of the patent term. The period of delay in the above-identified application is the period beginning on November 5, 2003, the date that the Notice of Appeal was filed, and ending on November 16, 2004, the date of the final decision in favor of the applicant. Three years after the International filing date of the application is March 13, 2002. Accordingly, the period of

¹35 U.S.C. § 154 was amended by the "American Inventors Protection Act of 1999," which was enacted on November 29, 1999 as part of Public Law 106-113 (Consolidated Appropriations Act for Fiscal Year 2000). Since this amendment is effective May 29, 2000 and applies to applications filed on or after that date, the prior patent term adjustment provisions of 35 U.S.C. § 154 continue to apply to the above-identified application.

extension is not required to be reduced pursuant to 37 CFR 1.701(d)(1) by the amount of time prior to three years after the filing date of the application. As a result, the period of extension is 378 days, the period from November 5, 2003 to November 16, 2004, including the beginning and end dates.

The patent, if issued, will include an indication that the patent term is extended by **378** days.

Telephone inquiries with regard to this communication should be directed to the undersigned at (571) 272-7709.



Mark Polutta
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Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy